

## PLAN AND ZONING COMMISSION

PZ\_AF\_03-25-2019

Chairperson Erickson called the regular meeting of the Plan and Zoning Commission to order at 5:30 p.m. on Monday, March 25, 2019, in the Council Chambers of the West Des Moines City Hall, located at 4200 Mills Civic Parkway, in West Des Moines.

Roll Call: Andersen, Costa, Drake, Erickson, Hatfield.....Present  
Crowley, Southworth.....Absent

### **Item 1 - Consent Agenda**

#### **Item 1a - Minutes of the meeting of March 11, 2019**

Chairperson Erickson asked for any comments or modifications to the March 11, 2019 minutes.

Moved by Commissioner Costa, seconded by Commissioner Drake, the Plan and Zoning Commission approved the March 11, 2019 meeting minutes.

Vote: Andersen, Costa, Drake, Erickson, Hatfield.....Yes  
Crowley, Southworth.....Absent

Motion carried.

### **Item 2 – Public Hearings**

There were two Public Hearing items to address.

#### **Item 2a - Sugar Creek Estates Rezoning, Located approximately at the Northeast corner of 100<sup>th</sup> Street and Stagecoach Drive – Designate Residential Medium Density (RM-8) zoning on approximately 24.01 acres – Sugar Creek Estates, LLC - ZC-004124-2018**

Chairperson Erickson opened the public hearing and asked the Recording Secretary to state when the public notice was published. The Recording Secretary indicated that the notice was published in the Des Moines Register on March 15, 2019.

Chairperson Erickson asked for a motion to accept and make a part of the record all testimony and all other documents received at this public hearing.

Moved by Commissioner Hatfield, seconded by Commissioner Andersen, the Plan and Zoning Commission accepted and made a part of the record all testimony and all other documents received at this public hearing.

Vote: Andersen, Costa, Drake, Erickson, Hatfield.....Yes  
Crowley, Southworth.....Absent

Motion carried.

Eric Cannon, Snyder and Associates, 2727 SW Snyder Blvd, Ankeny, stated he was representing the developer Sugar Creek Estates LLC in their proposal to amend the zoning to RM-8 for multi-family residential and concluded that he was happy to answer any questions.

Brad Munford, Development Services Planner, informed that this property was annexed into the City in 2003. During the 2010 comprehensive plan update, the property was designated medium density residential. This is consistent with that classification; staff recommend approval.

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Chairman Erickson commented that this piece of ground will be impacted by trails, a nearby creek, and so forth. Planner Munford responded that the Commission would see those issues addressed with the site plan.

Chairperson Erickson asked if anyone from the audience would like to speak to this item; seeing none, closed the public hearing and asked for continued discussion or a motion.

Moved by Commissioner Costa, seconded by Commissioner Drake, the Plan and Zoning Commission adopted a resolution recommending the City Council approve the rezoning request.

Vote: Andersen, Costa, Drake, Erickson, Hatfield.....Yes  
Crowley, Southworth.....Absent  
Motion carried.

### **Item 2b - Stark Vacation, Vacation of approximately 145 feet of Stark Drive west of the intersection with S. 100<sup>th</sup> Street – Kings Grove, LLC - VAC-004108-2018- MUNFORD**

Chairperson Erickson opened the public hearing and asked the Recording Secretary to state when the public notice was published. The Recording Secretary indicated that the notice was published in the Des Moines Register on March 8, 2019.

Chairperson Erickson asked for a motion to accept and make a part of the record all testimony and all other documents received at this public hearing.

Moved by Commissioner Hatfield, seconded by Commissioner Andersen, the Plan and Zoning Commission accepted and made a part of the record all testimony and all other documents received at this public hearing.

Vote: Andersen, Costa, Drake, Erickson, Hatfield.....Yes  
Motion carried.

Erin Ollendike, Civil Design Advantage, 3405 SE Crossroads Dr, Suite G, Grimes, informed the Commission she was here on behalf of the developer of this project that they were here tonight for a discussion of the vacation of Stark Drive. She stated that Staff had outlined 4 different options for the vacation. In talking with the Client, they would prefer Option 2, which would require that the City retain ownership of Stark Drive, and that the developer would be responsible for the maintenance of that Drive; concluding that this roadway goes into the private townhome development, and will have a connection on 100<sup>th</sup> Street, and down to Booneville Road.

Chairman Erickson clarified that the request was to have the City retain ownership; with no discussion of money changing hands, and that it's just a maintenance agreement. Ms. Ollendike affirmed that, and that the developer, and then the Homeowner's association, would maintain that roadway.

City Attorney Scieszinski stated that back in October when the preliminary plat went through, the understanding was that the developer would pay fair market value for this property and the City would convey it to them. Mr. Stanbrough recently indicated he wasn't willing to pay for that as it wasn't his understanding when this went through with the preliminary plat, due to some miscommunication. This is an unusual situation for the City. Attorney Scieszinski stated it's his understanding that circulation would end at King's Grove without a public roadway through continuing to the West. The original developer wanted to put in a private drive. When King's Valley was platted, the plan was to continue this roadway as a public street, so the City asked King's Valley to dedicate that. King's Valley raised some objections for various reasons; it doesn't seem quite fair that they would be required to put this in at their expense a year or two ago, thinking this would be part of the public street, and now we're going

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to vacate it and allow another developer to use it. The Preliminary Plat took that into account. On behalf of King's Valley, Mr. Harmeyer has raised objections. The City has informed the developers that we have to take into account that access will need to be maintained to the two adjacent lots to the north and the south, and that the street would most likely be maintained by Mr. Stanbrough.

City Attorney Scieszinski stated in his recent discussion with Mr. Stanbrough, nothing was final, but he was told that the City did allow King's Valley to have an easement over the top of this; a maintenance agreement would have to be in place, and include care of the street itself, and if there were the street were to break down in the future, the repair would be King's Grove's responsibility. They are reluctant to agree to that now, and it wasn't a formal agreement. There are still some lingering questions from both parties that would need to be resolved tonight before a decision is made.

Development Services Planner, Brad Munford summarized the request to vacate 145 feet of Stark Drive, reviewing the site plan and drive in the northern half of the preliminary plat approved in October 2018. He informed that one of the concerns is that there is no way to delineate between the private and public street, which creates issues for snowplows turning, and garbage trucks. This was pointed out several months ago in the pre-application meeting and Staff provided two options. One option was to design the site plan with a turnaround on the property; or vacate Stark Drive and lot tie the new piece of ground to this piece. The applicant moved forward with the second option. Procedurally, public streets have a 60 ft ROW, private streets do not. Density becomes the issue. With townhomes which have more than 3 homes, setback is 50 feet. With a private drive, setback can be as little as 15 feet. This allows for more density for the developer. There is still an issue of turning around. Typically with a vacation process, the applicant pays fair market value for the property; this doesn't come before the Plan & Zoning Commission often. Here, the applicant is requesting something different. In October 2018, the preliminary plat and site plan were approved by P&Z with the applicant agreeing to vacate and own the private drive prior to final site plan. A turnaround might reduce the number of buildable units, which may not be the developer's preference.

Staff has issue with this setting a precedent and is asking for direction from the Commission. The 4 options are:

1. Direct the applicant to vacate the ROW, dispose of property, and pay fair market value for the property.
2. Vacate Stark Drive, but City maintains ownership; a maintenance agreement would need to be created and easement for adjacent owners to have access over the property, similar to landlocked property. This is the applicant's preference.
3. Not vacate the property at all, but enter into an agreement with the developer that they will maintain and take care of everything in the ROW. The applicant would have the ability to build as they desire. Staff concerns are that if the snow is not removed, the City will get the call first; if liability comes into play, people will come to the City first seeking resolution.
4. Do not vacate the property. Applicant either vacates as normal; or redesigns their site plan to show a turnaround easily identifiable delineation between public and private street.

Commissioner Drake asked if the City knows the estimated Fair Market Value. City Attorney Scieszinski replied that they do not, and that the property has been improved with 150 feet of concrete paving. Mr. Harmeyer could inform how much they paid for this. Chairman Erickson commented that it would include the land value plus improvements. City Attorney Scieszinski added that the sale of that improved property would be returned to the previous developer since they put it in believing it would be a public street. Chairman Erickson commented that in that scenario, had this been platted, they would have been on the hook to pave this out to the return, to make the previous development whole as originally designed.

Chairman Erickson opened the item up for public comment.

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Jerry Bussanmas, Kings Landing, LLC, 10200 NW 74<sup>th</sup> Ave, Johnston, stated concerns with putting in that public street, changing the zoning to single family, and having bonds in effect for water lines, future sidewalks. He preferred Option 4, as there's no gray area whether its public or private street.

Commissioner Costa asked why Mr. Bussanmas preferred a city street over private. Mr. Bussanmas expressed that there is uncertainty about the long-term maintenance hinging on funding availability from the HOA, concern about for sale signage being posted near the single family homes and bringing multi-family zoning back into the plat.

Brian McMurray, 308 SE 17<sup>th</sup> Ct, Grimes, voiced agreement with Mr. Bussanmas' comments and added a couple things. With Option 1, his concerns included whether lots 8 and 9 would have the same amenities including trash hauling and snow removal, and accountability for the agreement. With Option 2, he voiced concerns about the maintenance agreement being developed without involving King's Landing. Mr. McMurray noted that Option 3 still leaves concern about accountability if the maintenance is not kept up. His preferred solution would be to put in the turnaround, which would alleviate density and ROW concerns.

Chairperson Erickson stated he had heard that lots 8 and 9 would have access to the street. He asked if those lots were sold, are there houses already using it or designed to use it. Mr. McMurray responded that they do have covenants in place that driveways would have access onto the public roadway.

Brad Stanbrough, 10888 Hickman Road, Suite 3A, Clive, expressed his concern over discovering late that they would have to pay fair market value for the street in order to vacate it; their understanding at the time of the preliminary plat was that they were only required to provide a maintenance agreement. He felt it was unfair for them to have to purchase City property and then vacate. Purchasing the two corner lots added to the financial burden. A week ago he found out he was to have asked the developer if they would like to exercise their first right of refusal – they could sell it to us at fair market value because it's a liability, concluding that the situation is unfortunate. He agreed to exploring some type of turnaround, preferring a design similar to an approach up to the sidewalk, as a full cul de sac would be overkill and not financially feasible.

City Attorney Scieszinski stated the City does have a policy about right of first refusal; and referring to state law if there is condemnation, it has to be offered back, but the City would be deviating from policy by offering it back to the previous owner, to the adjoining property owners for right of first refusal. Staff did have a conversation late in the day with Mr. Harmeyer and King's Landing which raised numerous questions about sidewalks, who would provide access to the two properties, and who will provide garbage service. Mr. Scieszinski had informed both parties that the City could write an agreement with rights and easement prior to conveyance, so if conveyed to Mr. Stanbrough's group, the City would maintain ownership. The City sees part of this problem as Mr. Harmeyer and this group as having equitable interest and should have discussed earlier on, however there should be some equity for both sides.

Chairperson Erickson questioned whether in a condemnation procedure, if disposing of land with right of first refusal, is the required dedication of the land by the developer considered to be equivalent to a condemnation. City Attorney Scieszinski responded that according to state law, probably not, it was not dedication, and an argument could be made that this is not an arm's length transaction in the sense that that if preferred to have the plat go through, put the street in. He mentioned a similar situation for Reeds Landing where they provided an access over by the mall, and the street never went through. If that were vacated, the money would go back to Mr. Reed.

Chairperson Erickson asked about a site south of Ryan's development at Bridgewood Plaza, a development where the City allowed fire access to go from public street to private street with delineators; whether that was parallel to this. Director Lynne Twedt replied that Bridgewood Drive was

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stubbed in and dead ended. The City expected it to be a public street or with access through, however the developer wanted speed bumps, etc., so it was made private to slow traffic into the development to the south. It was all built to those standards, there was not an individual access issue.

As there were no more public comments, Chairperson Erickson closed public hearing.

Commissioner Costa summarized that there is symmetry in that both parties were open to the Drive remaining a public street. As requested by the private developer, if the property to left was open to put in turnaround access, that seems the best solution for both parts. It remains a public street with access for public vehicles.

Chairperson Erickson noted that Mr. Stanbrough didn't seem willing to put in a full cul de sac. Mr. Stanbrough responded that in the Tiburon development, approaches were added to the sidewalk. He stated that a cul de sac would be overkill, from the perspective of cost and loss of units, the dump truck driver doesn't need a full cul de sac. He expressed that his goal is not to hinder the sale of the lots in King's Landing, and asked what the rules are for turnarounds. Director Twedt responded that the turnaround has to work for public trucks. Mr. Stanbrough stated he could ask Civil Design Advantage to put something together and if nothing worked, they would go back to maintaining the public street. They don't want to put King's Landing in the position of having to sell it to King's Grove or to not be able to sell their two lots.

Commissioner Hatfield questioned Attorney Scieszinski regarding access for the two adjacent lots from King's Landing. City Attorney Scieszinski responded that they aren't required to provide access to a public street but that's how the developer has it laid out.

Chairman Erickson asked Mr. Bussanmas to respond, regarding the covenants. Mr. Bussanmas stated that access with a drive onto the public street was not required, however it's an option offered to potential buyers. Having a corner lot, there is more sidewalk to maintain; the lot provides a driveway coming in from the side, and street parking available to the owner with a City street. If it was a private street, the owner wouldn't necessarily be allowed to park on it. He concluded that this is bringing multi-family up into their subdivision and devaluing their property. He questioned how the bonds for the sidewalks would be affected if they don't own the property. He recommended a turnaround for maintenance trucks, as a good delineation between the public and private.

Commissioner Drake stated she was not a fan of the proposed maintenance agreement, and that the Commission needs to look past the developer maintaining this. She voiced disapproval of Options 2 and 3, concluding that Option 1 was approved at the October 2018 meeting, and Option 4 is the most functional for everybody if the developer can manage the turnaround.

Commissioner Andersen agreed, stated she was not in favor of having another party own part of the road; with concerns about maintenance 15 years down the road. She added that she was leaning toward supporting Option 4.

Commissioner Costa commented that if Option 4 summarizes what the Commission has talked about, he moved to approve Option 4. Commissioner Hatfield seconded the motion.

Moved by Commissioner Costa, seconded by Commissioner Hatfield, the Plan and Zoning Commission adopted a resolution recommending the City Council approve vacation request Option 4.

Vote: Andersen, Costa, Drake, Erickson, Hatfield.....Yes  
Crowley, Southworth.....Absent

Motion carried.

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### **Item 3 – Old Business**

There were no Old Business items to address.

### **Item 4 – New Business**

#### **4a – Microsoft DSM09-10, Southwest corner of the future extension of Veterans Parkway and Interstate 35 – Approval of a Site Plan for construction of Two 200,000 Square Foot Data Center Buildings - Microsoft Corporation – SP-004071-2018**

Ryan Hardisty, Civil Design Advantage, 3405 SE Crossroads Dr, Suite G, Grimes, informed that the preliminary plat for this site was just approved at a previous Plan & Zoning Commission meeting. He then provided a quick overview of the site, noting access, grading, and public utilities which have been under construction for the past year. Mr. Hardisty noted that preliminarily they had been seeking phased site plan approval, however they had resolved some architectural items with Staff and so were requesting full site plan approval.

Chairman Erickson asked if the Commission was being asked to approve any future work with this decision. Mr. Hardisty replied that they were not, this site plan is for these two buildings only.

Commissioner Drake asked if the applicant agreed with Staff's conditions of approval. Mr. Hardisty affirmed that they do.

Brian Portz, Development Services Planner, stated that he had added a memo to the dais regarding the MidAmerican Energy site and approving that with this action. He informed that Staff are still waiting for some revisions for that site plan and additional details of the fence proposed around the site. He noted that Staff are recommending the addition of another condition of approval to the Microsoft site plan pursuant to those outstanding items.

Chairperson Erickson asked if anyone from the audience would like to speak to this item, seeing none, asked for continued discussion or a motion.

Moved by Commissioner Hatfield to approve the site plan with the inclusion of the additional condition, seconded by Commissioner Drake, the Plan and Zoning Commission recommended approval of the site plan.

Vote: Andersen, Costa, Drake, Erickson, Hatfield.....Yes  
Crowley, Southworth.....Absent  
Motion carried.

#### Conditions of Approval

1. The City Council approving and authorizing the use of gravel parking drives throughout the duration of construction of all phases of the Osmium site.
2. The applicant acknowledging and agreeing that all temporary parking areas, temporary drives, tents and trailers shall be completely removed from the site and all areas improved to their final condition within six months of issuance of a Temporary Occupancy Permit for the last building within the Osmium q site.
3. The applicant obtaining any necessary tent permits and inspections from the City's Fire Department prior to installation of the tents within the site.
4. The applicant continuing to work with staff on outstanding building and site design elements.

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5. MidAmerican Energy shall provide revisions to the substation portion of the site plan, including details of the proposed screen fence for the substation and receive staff approval prior to issuance of a building permit for the substation.

### **Item 5 – Staff Reports**

Item 5a - The next scheduled meeting will be Monday, April 8, 2019.

### **Item 6 - Adjournment**

Chairperson Erickson adjourned the meeting at 6:14.

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Chris Costa, Vice Chair

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Jennifer Canaday, Recording Secretary